



National Crime Prevention and Privacy Compact
COMPACT COUNCIL MEETING
WASHINGTON, DC
NOVEMBER 14, 2001
MINUTES

The meeting of the Compact Council was called to order at 9:10 a.m. on November 14, 2001, in the Franklin/McPherson meeting room of the Grand Hyatt Washington, Washington, DC, by Compact Council Chairman Wilbur Rehmann.

Chairman Rehmann explained that the events of September 11th pushed the meeting back to November 14th, and that he expected to have a full and open meeting in January 2002. The primary objective of the November meeting was to hold the election of officers. Chairman Rehmann mentioned that FBI representative, Assistant Director Michael Kirkpatrick designated Deputy Assistant Director (DAD) Bill Temple as his proxy until his arrival later that afternoon. Chairman Rehmann also received a proxy letter from Ms. Donna Uzzell naming Ms. Martha Wright as her proxy for the meeting.

Chairman Rehmann next briefed the Council on his activities and the activities of the Vice-Chair since the last meeting. Chairman Rehmann attended the June 2001 CJIS APB meeting in Nashville. He also met with Mr. Frank Campbell, Department of Justice, to discuss the Council's rulemaking process. Chairman Rehmann also addressed the Compact and the Council's activities at the Office of Personnel Management's Annual Conference of Security Professionals. He had also communicated to Council members various correspondence i.e., copies of letters and memorandums in further support of Council's initiatives. Additionally Chairman Rehmann met with staff members of Governor Ridge's office. They discussed the benefits of the Council's and the Homeland Security Office's joint efforts of sharing expertise, knowledge and experience. There are numerous Bills coming out of Congress that deal with Homeland Security antiterrorism legislation, all of which have significance to issues that the Council are concerned about. Lastly, Chairman Rehmann reported that he received a call from Mr. Dennis DeBacco stating that he had resigned from his position with the state of Nevada and, therefore, was no longer available to serve on the Council. The Council will replace Mr. DeBacco following the appropriate procedures as detailed in the Bylaws. It is hoped the appointment of the new state Compact Officer will be made in time for the meeting in January 2002.

Ms. Cathy Morrison, Interim FBI Compact Officer, called roll of the Compact Council members. The following Compact Council members, or their proxies, were in attendance.

State Compact Officers:

- Mr. Paul Heppner, Georgia Bureau of Investigation
- Mr. Wilbur Rehmann, Montana Department of Justice
- Mr. Terrance Hoil, Iowa Division of Criminal Investigation
- Major Mark Huguley, South Carolina Law Enforcement Division
- Lt. Col. Marjorie Kolpa, Connecticut State Police
- Mr. Allan Stanley, Colorado Bureau of Investigation
- Ms. Martha Wright, (proxy for Ms. Donna Uzzell), Florida Department of Law Enforcement)
- Lt. Col. Jeffrey Harmon, Maine State Police

State/Local Criminal Justice Agency Representative:

- Lt. Clifford Daimler, Oregon State Police

Federal Noncriminal Justice Agency Representative:

- Ms. Kathy Dillaman, Office of Personnel Management

Federal Criminal Justice Agency Representative:

- Inspector John Swanson, U.S. Postal Inspection Service

Advisory Policy Board Representative:

- Mr. William Casey, Boston Police Department

Federal Bureau of Investigation Representative:

- Mr. William C. Temple, (proxy for Mr. Michael D. Kirkpatrick, until his arrival), FBI CJIS Division

Additional attendees in the gallery were asked to introduce themselves and the agency they represented (See Attachment 1).

The first item of business addressed by the Council was the draft minutes from the May 2-4, 2001 meeting. Lt. Col. Jeffrey Harmon stated that he felt that the motion regarding the definition of criminal justice, on page 8 of the minutes, needed further clarification. Council members agreed.

Compact Council Action: Lt. Col. Jeffrey Harmon made a motion to refer the issues of criminal defense and also juvenile services for the possible inclusion into the definition of the administration of criminal justice to the APB for further clarification. Juvenile services is meant in the context of arrest, prosecution, and detention of juveniles. Mr. William Casey seconded the motion. The motion carried.

Compact Council Action: Mr. William Casey made a motion for approval of the May 2001 minutes. The motion was seconded by Mr. Allan Stanley. The motion carried.

Chairman Rehmann then announced the conclusion of his two-year term as Council Chairman and turned the meeting over to DAD Temple to chair the election of new officers. Mr. William Casey opened the election by nominating Mr. Wilbur Rehmann for Chairman. Mr. Rehmann accepted the nomination. Due to the fact that there were no other nominations for Chairman, Lt. Col. Harmon made a motion to elect Mr. Rehmann as Chairman by unanimous vote. Newly elected Chairman Rehmann then opened the floor for nominations for position of Vice-Chairman. Ms. Donna Uzzell and Lt. Col. Jeffrey Harmon were nominated. Council members cast their vote by secret ballot, the election results were counted and certified by CJIS Compact Office Staff. Lt. Col. Harmon was elected Vice Chairman by vote of the Council members.

Compact Council Action: Mr. John Swanson made a motion that the election ballots be destroyed. The motion was seconded by Mr. Allan Stanley. The motion carried.

Agenda items were then addressed.

Topic #1 FBI Status on Name Checks for Applicant Fingerprint Submissions Rejected by IAFIS Due to Illegibility

Ms. Paula Barron, FBI Compact Office Staff, presented this topic. Ms. Barron provided a status update to the Council on rejected illegible applicant prints. A staff paper was submitted to the Fall 2001 CJIS APB Regional Working Groups on modifying IAFIS so that it could generate a technical reject message that would indicate whether a name search had been conducted with negative results. Ms. Barron presented the Working Group motions as stated in the staff paper and provided information on an interim procedure CJIS has established to accommodate name searches for prints rejected twice for image quality. The Council was asked to review and comment on the established procedure. After much discussion among the Council members, Chairman Rehmann stated that this issue would not be resolved at this time. He felt that the issue needed to be discussed further, however, he felt that the interim measures were a step in the right direction. Chairman Rehmann asked DAD Temple to study the possibility of CJIS conducting the name checks automatically after the second reject. CJIS will report back to the Council regarding this issue.

Topic #2 Prioritization of Criminal Justice Information Services Division Systems

Ms. Barbara Wiles, FBI Compact Office Staff, presented this topic. Ms. Wiles stated that at the May 2001 Compact Council meeting, a Council member suggested that Compact members be briefed on the prioritization of CJIS Division enhancements. By way of background, the CJIS Division recently implemented two system, IAFIS and NCIC. Ms. Wiles reported that during the lengthy development of these two systems, enhancements were recommended by users of the systems. These enhancements were delayed until the new systems became operationally stable. A systems enhancement strategy group was established to review and address the pending system enhancements. This group met in February 2000, with CJIS Division personnel to evaluate the validity of the enhancements requested; to prioritize the pending system enhancements; and to establish a method to prioritize future enhancements. In the enhancement system, there are six priority levels and within each of the priority levels, the enhancements are

categorized as either high, medium, or low. Ms. Wiles explained that a form was created by the CJIS Division to request essential information necessary to evaluate a proposed enhancement submitted through the APB process. Individuals interested in submitting topics for consideration complete the form and send it to their Control Terminal Officer. Ms. Wiles stated that currently, Council meeting topics are solicited from Council members. Council members were asked to consider broadening this audience to include input from other stake holders such as users of the noncriminal justice system. FBI Interim Compact Officer Cathy Morrison commented that the Council should consider whether it wants to formalize a process to reach out to the states/users or whether to use a similar type process which would facilitate discussions for future agendas. Chairman Rehmann suggested that the Council not take any formal action on this topic until the next Compact Council meeting in January 2002. Mr. Swanson stated that the Council should develop its own devices to determine agenda items and then determine how it fits into the various CJIS components.

Topic #3 Applicability of Compact Council "rules, procedures, or standards" to Nonparty States and to Law Enforcement Agencies

Under the direction of Chairman Rehmann, this topic was tabled until the January 2002 Compact Council meeting. Chairman Rehmann provided that he has met twice with DOJ and FBI legal staff regarding this topic. The discussions have been fruitful and a proposal will hopefully be prepared for the January meeting.

Topic #4 Compact Ratification by Executive Order

Chairman Rehmann provided a brief overview for this topic. He stated that this topic came about because a state attempted to ratify the Compact by Executive Order. There were numerous discussions with FBI staff as to whether or not that is an appropriate way of ratifying the Compact. Chairman Rehmann mentioned that subsequently, the state has voluntarily withdrawn its request for recognition as a Compact state and will be presenting a bill to its state legislature. The state recognizes the need for a more solid foundation of having the legislature ratify the Compact. Chairman Rehmann suggested that no action be taken at this time as the state has withdrawn its request for recognition. The Council will monitor the issues and the legislative authority given to the state's governor prior to any formal action on this topic.

Topic #5 Status Update on the Possible Expansion of the Definition of "Criminal Justice" in the Code of Federal Regulations (CFR) and the United States Code (U.S.C.)

Mr. Danny Moye, CJIS Attorney Advisor, presented this topic. He stated that at the May 2001 meeting, the Council recommended that the topic "Definition of Criminal Justice" be forwarded to the APB for consideration. The APB was requested to revisit the definition and look at possibly recommending changes to the CFR to allow "criminal justice" to include some components which are currently in the prevention category. In the Fall 2001, the regional working groups were asked to discuss a policy change which would expand the definition of "criminal justice" to include "prevention" for the limited purpose of allowing criminal justice agency personnel to perform name-based checks of criminal history records when tied to specific law enforcement programs. The results of such checks would not be released outside the law enforcement agency. Mr. Moye mentioned that the paper presented to the working groups did not include the request for terminal access to Criminal History Record Information (CHRI) by public defense attorneys or the juvenile issue, as presented by Mr. Robert McKeever, Maryland Department of Public Safety, at the May 2001 Council meeting. Chairman Rehmann stated that he didn't anticipate the need for further Council action since the motion earlier in the morning expanded the call to the APB to look at criminal defense and juvenile services. Mr. Moye replied that there would be a topic paper in the spring addressing the two components.

Topic #6 Status Report on Proposed Legislative Amendments to the Volunteers for Children's Act

Mr. Gary Cooper, SEARCH, provided a status report on the Volunteers for Children's Act (VCA). He mentioned that in the past there have been numerous discussions between the APB, Compact Council, SEARCH, and various volunteer organizations, such as the Boy Scouts, Big Brothers and Big Sisters, all which are looking for middle ground between the bill introduced by Senator Biden and the bill introduced by Senator DeWine. The 106th Congress had concluded; and to date further proposed amendments to the VCA have not been reintroduced. Subsequent to the September 11th terrorist attacks, much attention has been focused on antiterrorism legislation. Mr. Cooper stated that SEARCH, at its last meeting, voted unanimously to support the bill that Senator Biden had introduced.

Mr. Owen Greenspan, SEARCH, provided the Volunteers for Children Act survey results. (See Attachment 2). Mr. Greenspan explained that the first survey was a noncriminal background processing survey used to gather information on state practices, policies, and workload. The second survey was requested by Chairman Rehmann, and it directly addressed programs implemented under the VCA. Forty-one states responded to the survey. All respondents indicated forwarding at least some part of the noncriminal workload to the FBI. Thirty-four states reported at least some background checks are conducted by name searches of state files. These name searches are independent of a technical fingerprint search, however states reported at least part of the noncriminal workload is handled by technical fingerprint searches of state files. Thirty-two states indicated that at least some noncriminal prints are forwarded to the FBI after a technical fingerprint search. Fifteen states reported that at least some part of its workload is forwarded to the FBI without a technical fingerprint search. Responding states

reported well over 8 million background checks were conducted in the year 2000. The costs reported for state name checks ranged from no charge up to twenty-five dollars. Mr. Greenspan reported that it was not clear from the survey responses how many of the 28 states conducting volunteer checks relied exclusively on the VCA or relied exclusively on a state-based comparable statute. Mr. Greenspan also reported on a third survey that dealt with retention practices on civil prints. Of the forty-five states that responded, only thirteen indicated non-retention of applicant prints. Of the thirty-two states that retained applicant prints (at least some portion of their civil work load), twenty-seven states indicated a subsequent search on their retained work. In most instances, the state notified the entity that submitted the civil print in the first instance of the subsequent criminal activity that was associated with the applicant subject.

Ms. Dillaman requested SEARCH compile a single document containing background check requirements for all fifty states including details such as user fee charge, turnaround time, fingerprint requirements, III access ability, etc. Mr. Cooper agreed to this request asking Ms. Dillaman to work with Mr. Greenspan to develop questions for this study. Mr. Cooper's thought is to create a document that could be regularly updated by the states so that the information included would be accurate and timely.

Chairman Rehmann mentioned that CJIS attorney Hal Sklar had made a presentation at the North Central Working Group meeting which seemed to have a different interpretation of the VCA. Chairman Rehmann said it was confusing because it appeared to contradict the FBI's earlier position on what states could or could not do in reference to forwarding rap sheet information to a qualified entity. Chairman Rehmann asked the FBI to provide further clarification on this matter.

Next, Chairman Rehmann, provided the Council with some legislative updates. He mentioned antiterrorism legislation from HR 3162 had a specific reference to the Compact under Section 403, which entitled access by the Department of State and the Immigration Naturalization Service to certain identifying information in the criminal history records of visa applicants and applicants for admission to the United States. This bill provides such searches shall be consistent with the terms in the National Crime Prevention and Privacy Compact Act of 1998. Chairman Rehmann reported on another piece of legislation dealing with background checks for hazmat drivers license, i.e., licensing of individuals either who have a current hazmat license or who are applying for one. He explained that the bill itself is relatively general in that it states a background check may be conducted and doesn't specify this as a fingerprint-based check.

Mr. Gary Cooper, SEARCH, mentioned tracking legislation in Congress that deals typically with noncriminal justice background checks or any legislation that is introduced that has an impact on state and local information sharing and information management. Mr. Cooper mentioned that since September 11th, they are tracking 18 bills dealing with counter-terrorism.

Topic #7 Mission Statement/Goals/Objectives and Work Plan

_____ Ms. Barbara Wiles, FBI Compact Office Staff, provided the following update. Ms. Wiles stated that at the February 2001 Planning meeting, the Council developed a mission statement,

five goals and the objectives for accomplishing each of these goals. At the May 2001 meeting, the Council developed strategies and a step by step work plan for the goals. Council members received a revised plan with changes shown in italics. Ms. Wiles reported that nine of the strategic work plan items from the strategic plan have been accomplished. They are as follows: 1) a standard briefing notebook has been created and distributed to all new Compact officers, 2) a new member orientation meeting for new Council members/state Compact Officers has been scheduled for the January 2002 meeting, 3) a Compact Council web-site on the FBI home page has been established, 4) Council representation at CJIS working group, subcommittee, and APB meetings, 5) a pamphlet has been drafted on the National Crime Prevention and Privacy Compact Council, 6) an invitation to attend the Governor's Association meeting, 7) notices of meetings and minutes have been distributed to state repositories, 8) a travel budget has been established, and 9) the Council started the process of establishing regular meetings with the Attorney General's staff on Compact Council issues. Ms. Wiles asked the Council to review the strategic work plan as presented and to make recommendations for additions or changes to the work plan or to approve the plan as final. Ms. Wiles also requested the Council consider the need to develop a vision statement. Chairman Rehmann asked Council members to review the plan before the next meeting in January 2002, and provide feedback to the Compact Office.

Topic #8 The Council's Rulemaking Process

Chairman Rehmann briefed the Council on this topic. The Council's rulemaking process came up at the May 2001 meeting at the suggestion of Mr. Frank Campbell, Department of Justice. Mr. Campbell felt that it would serve the Council's purposes better if the rulemaking process offered ample opportunity for interested parties, whether governmental or nongovernmental, to comment on the Council's rules. Chairman Rehmann and FBI Compact Officer Cathy Morrison reviewed a list of items that could be incorporated into the Council's rulemaking process (See Attachment 3 for a copy of the discussion draft). Chairman Rehmann stated this would only create a minor change in acknowledging a comment period through a proposed rule concept. He felt this would not delay the rulemaking process, and would ensure that the Council receive the broadest input into the rulemaking process. Chairman Rehmann directed FBI staff to research the rulemaking process and prepare something for circulation at the January 2002 meeting.

Topic #9 Proposed Changes to the Code of Federal Regulations Title 28, Part 20

Mr. Danny Moye, CJIS Attorney Advisor, presented this topic. In August and September 2001, the CJIS APB Regional Working Groups were asked to consider proposed changes to the 28 CFR. Upon considering the proposed CFR amendments, the Northeastern Working Group requested the noncriminal justice aspects of the proposed CFR changes be forwarded to the Compact Council for consideration. After much discussion, the Council agreed it was not ready to take action on this topic. The Council voiced there are numerous issues that need further exploration before this is voted on.

Compact Council Action: Mr. John Swanson made a motion to take no action on this issue at this time. The motion was seconded by Mr. Allan Stanley. The motion carried.

Topic #10 Emergency Responses to National Disasters

Mr. Danny Moye, CJIS Attorney Advisor, presented this topic. He stated that the purpose of his presentation was to inform the Council on the status of the request for III access due to national disasters to emergency responses. There have been national emergencies where state officials desired to have access to criminal history record information but didn't have III access to conduct background checks. In response to those requests, IDIS machines were provided to the states to conduct fingerprinting. CJIS allowed name-based checks followed immediately or within a couple days with fingerprint-based checks to protect citizens in those areas from unscrupulous contractors. Access Integrity Unit received an opinion from FBI's Office of General Counsel and DOJ's Office of Legal Counsel that existing legislation was not broad enough to allow said access. States could not permit fingerprint based checks unless they had an authorized 92-544 statute. As an alternative, legislation is being drafted to amend 28 U.S. Code Section 534 that would, at a federal level, allow name-based access whenever the President has concluded a federal emergency is in existence.

Topic #11 FBI Status Report on Readiness to Respond to NFF Participation

Chairman Rehmann introduced this topic, stating that the Compact has been ratified by 13 states and there haven't been any new NFF state participants. There is concern by the Council on the FBI participation in the process and their ability to move forward with the decentralization of record keeping.

Assistant Director Michael Kirkpatrick reported on the October 5, 2001 letter that he had received from Chairman Rehmann (See Attachment 4). The first issue dealt with a status report on the FBI's efforts to bring aboard National Fingerprint File (NFF) states and any problems that are hampering the further implementation of the NFF such as IAFIS design features. Mr. Kirkpatrick mentioned that in terms of problems hampering efforts to bring on more NFF states, there are some design features in the IAFIS system that make it difficult to respond with NFF records. The way IAFIS is designed currently does not provide an electronic response back to the requesting agency when there is a hit which contains an NFF record as part of that hit. Mr. Kirkpatrick stated this is on the CJIS's priority list of system enhancements, at an estimated cost of approximately \$5 million.

The next issue addressed was the ability of the FBI to continue, upon request, making direct hard copy responses to fingerprint contributors instead of responding to the state repositories who in turn would transmit the electronic responses to the noncriminal justice users. To accomplish this would require some changes to state systems so that prints could be transmitted electronically, but with a new type of transaction (STOT) code which allows a hard copy response. Mr. Kirkpatrick reported that CJIS will be testing a pilot with the American Bankers Association to determine feasibility on how this would work. He also stated that there would be an update on this issue at the January 2002 Council meeting.

The third issue dealt with NFF on-site reviews. Chairman Rehmann commented that the true benefits of the passage of the Compact won't be realized until the Compact states are participating in the NFF. Chairman Rehmann said that this is an extremely important issue.

Mr. Kirkpatrick responded by saying that CJIS's main focus has been on improving the stability of the IAFIS system over the last year. CJIS has made significant strides in that area which should allow work in other items of importance.

A question was asked concerning the IAFIS design feature, precluding new NFF state participation and if so, what is the timetable for resolution once work had begun on the system enhancement. Mr. Kirkpatrick estimated this would take approximately one year.

Lt. Col. Harmon stated that the quicker the move to NFF, the quicker states could provide more complete and timely records for all the users. A question was asked in regards to how the ranking of this issue fell on the priority list.

Compact Council Action: Lt. Col. Jeffrey Harmon made a motion to set the priority level as 2H. The motion was seconded by Ms. Martha Wright. The motion carried.

Topic #12 Wrap Up Discussion to Include January 2002 Meeting Topics

Chairman Rehmann informed the Council of the topics that he anticipated having on the meeting agenda in January. He stated that there would be a resolution or at least a proposal on the discussions with the Department of Justice and the FBI over the issue of jurisdiction of the Compact. There will be a Standards Committee Report which will include a report on record screening requirements and NFF qualification and audit criteria. There are also plans for a discussion on the National Fingerprint Based Applicant Check study. Chairman Rehmann asked Mr. Kirkpatrick to give the Council an update on NFF. The Sanctions Committee should also have a report discussing the sanctions process. Chairman Rehmann also mentioned that there was a request from New Jersey on the expanded time frame for a delayed fingerprint submission in the emergency placement of children. He also mentioned inviting staff from the Homeland Security Office to future Council meetings. Lt. Col. Harmon mentioned the Council needed to follow up on the issue of the rule making process.

Other Business

An awards ceremony, during the afternoon break, recognized Mr. John Swanson's upcoming retirement. Chairman Rehmann presented Mr. Swanson with a letter thanking him for his 18 months of service to the Compact Council. Mr. Kirkpatrick presented Mr. Swanson with a certificate of appreciation from FBI Director Mueller.

In conclusion, Mr. Paul Heppner, representing the members of the Council, presented Chairman Rehmann a gavel in recognition of his accomplishments during his two years as Chairman of the Compact Council.

Lt. Col. Harmon suggested that a letter be sent to Ms. Donna Uzzell in recognition of the time she spent as ViceChair and for all the extra effort she has spent fulfilling that position.

The meeting was adjourned at 4:45 p.m.